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IN THE

Supreme Court of the United States

October Term, 1963

No. [redacted] 16

BANCO NACIONAL DE CUBA,
Petitioner,

vs.

PETER L. F. SABBATINO, et al,
Respondents.

BRIEF OF AMICUS CURIAE, PAN-AMERICAN LIFE INSURANCE COMPANY.

JAMES A. DIXON, Amicus Curiae,
Attorney for
PAN-AMERICAN LIFE INSURANCE COMPANY.
Address:
9th Floor, Dade Federal Bldg.,
101 East Flagler Street,
Miami 32, Florida.

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No. 403

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BRIEF OF AMICUS CURIAE, PAN-AMERICAN LIFE INSURANCE COMPANY.

PAN-AMERICAN LIFE INSURANCE COMPANY supports in part the position of BANCO NACIONAL DE CUBA before this court. It urges upon the court the argument that this court should uphold the application of the "Act of State" doctrine *at least* to the extent of recognizing the power of the Republic of Cuba to modify or terminate the rights of its individual citizens against expropriated American concerns.

The United States extended diplomatic recognition in January, 1959, to the government of the Republic of Cuba of which Fidel Castro was and is Premier. As such a recognized foreign sovereign it is an equal in the family of nations. *The Antelope, 10 Wheat. 66.*

As such a recognized foreign sovereign, its power to affect the rights, duties and powers of its citizens, even though resident abroad, is at least equal to the like power of the United States. This court, in at least four cases, has upheld the existence and exercise of this power by the United States.[1]

Cuban Law No. 851 authorized the issuance of resolutions of expropriation. Resolution No. 1 under this law is involved in this cause. Resolution No. 3, of October 24, 1960, expropriated PAN-AMERICAN LIFE INSURANCE COMPANY and numerous other American companies and individuals. By the express language of Section 2 of Resolution No. 3, the Republic of Cuba substituted itself as the obligor upon the then existing liabilities of the expropriated concerns. Furthermore, amicus curiae is prepared to prove, in any court which can receive evidence, that in the field of insurance, the Republic of Cuba is actually performing the liabilities thus assumed.

The situation is thus closely analogous to that before the Second Circuit in *Tillman v. National City Bank, 118 F.2d 631*, where the court upheld the power of a recognized foreign sovereign to force an "involuntary novation" upon its nationals and thereby relieve the former obligor of its liability to the former creditor.[2]

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[1]U. S. v. Bowman, 260 U.S. 94; Blackmer v. U. S., 284 U.S. 421; Skiriotes v. Florida, 313 U.S. 69; Steele v. Bulova Watch Co., 344 U.S. 280.

[2]See also: Banco de Espana v. Federal Reserve Bank, 114 F.2d 438; Bernstein v. Von Heyghen etc., 163 F.2d 246; Dougherty v. Equitable Life Assurance Society, 266 N. Y. 71, 193 N. E. 897; Salimoff v. Standard Oil Co., 262 N. Y. 220, 186 N. E. 679; U. S. v. Belmont, 301 U.S. 324; Pons v. Republic of Cuba, 294 F.2d 925; Cf. White, Nationalization of Foreign Property, pages 46, 51, 53 and 65.

Cuban Law No. 568 was enacted in late September, 1959. It is a currency control law, and purports to forbid the exportation of capital from Cuba, except by permit from the BANCO NACIONAL DE CUBA, and then only for certain limited purposes and in limited amounts. In this aspect, and in its applicability to Cuban nationals it is clearly an exercise of an inherent power of sovereignty.[3]

In this aspect and in its application to Cuban nationals, it is also the type of legislation envisioned in Art. VIII, 2(b), of the Bretton Woods Agreement, which has been enacted by Congress as a part of the domestic law of this country. *22 U.S.C. 286 h.*[4]

The space limitations of this brief do not permit the development of a full argument that Law No. 568 is within the ambit of Art. VIII 2b, but it can be stated in good faith that such an argument can be made within the bounds of reason and logic.[5]

A refusal by the courts of the United States to recognize the power of the Republic of Cuba to modify or terminate the rights of its nationals would be an open invitation to the courts and governmental agencies of other nations to refuse effect to United States legislation affecting the rights and duties of American citizens abroad.

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[3]The Gold Clause Cases, 294 U.S. 240, 319 and 330; Nortz v. U. S., 294 U.S. 317; Naamloze etc. v. Chase National Bank, 111 F. Supp. 833 at page 845.

[4]See the official interpretation of this section of the agreement, published in the Federal Register Aug. 19, 1949, p. 5208, by the National Advisory Council on International and Financial Problems. See also, Joseph Gold, The Fund Agreement in The Courts.

[5]Such an argument has been accepted as the law binding State Courts in the case of Theye v. Pan-American Life Insurance Company, decided by the Court of Appeal of Louisiana, not yet reported.

The fact that we do not approve of the actions of the Castro government, measured by our own standards of ethics and morality, should not affect the decision. Some other nation, with different traditions of ethics and morality, may take a similarly disapproving view of our own legislation.

The "Act of State" doctrine, at least in the narrow confines here contended for, should be upheld as the only sure means of preserving our national interest in our legislative control of our own citizens, whether at home, on the high seas, or abroad.

Respectfully submitted,

JAMES A. DIXON

JAMES A. DIXON,
9th Floor, Dade Federal Building,
101 East Flagler Street,
Miami 32, Florida.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of August, 1963, a copy of the foregoing brief was served upon all counsel of record, including amicus curiae, by prepaid mail.

JAMES A. DIXON

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